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Counsel for Shelley D. Krohn, Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

LAS VEGAS LAND PARTNERS, LLC,

Debtor.

Case No. BK-S-19-15333-MKN
Chapter 7

**EX PARTE APPLICATION TO EMPLOY
CBRE, INC. AS APPRAISER AND PAY
FEE PURSUANT TO 11 U.S.C. §§ 327(a),
328(a), AND 330 AND FEDERAL RULES
OF BANKRUPTCY PROCEDURE 2014
AND 2016**

Date of Hearing: N/A
Time of Hearing: N/A

Judge: Honorable Mike K. Nakagawa¹

Shelley D. Krohn (the “Trustee”), the duly appointed Chapter 7 Trustee in the above-captioned bankruptcy case, by and through her counsel, Jacob L. Houmand, Esq. and Bradley G. Sims, Esq. of the Houmand Law Firm, Ltd., hereby submits this *Ex Parte Application to Employ CBRE, Inc. as Appraiser and Pay Fee Pursuant to 11 U.S.C. §§ 327(a) 328(a), 330 and Federal Rules of Bankruptcy Procedure 2014 and 2016* (the “Application”).

This Application is filed pursuant to 11 U.S.C. §§ 327 and 328 and Federal Rule of Bankruptcy Procedure 2014. The Application is based on the following Memorandum of Points

¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The Federal Rules of Civil Procedure will be referred to as “FRCP” and the Federal Rules of Bankruptcy Procedure will be referred to as “FRBP.” The Local Rules of Practice for the United States Bankruptcy Court for the District of Nevada shall be referred to as the “Local Rules”.

and Authorities, the *Declaration of Shelley D. Krohn In Support of Ex Parte Application to Employ CBRE, Inc. as Appraiser and Pay Fee Pursuant to 11 U.S.C. §§ 327(a) 328(a), 330 and Federal Rules of Bankruptcy Procedure 2014 and 2016* (the “Trustee Declaration”), and the *Declaration of Tom Baroch in Support of Ex Parte Application to Employ CBRE, Inc. as Appraiser and Pay Fee Pursuant to 11 U.S.C. §§ 327(a) 328(a), 330 and Federal Rules of Bankruptcy Procedure 2014 and 2016* (the “Baroch Declaration”), and the *Declaration of Jacob L. Houmand, Esq. In Support of Ex Parte Application to Employ CBRE, Inc. as Appraiser and Pay Fee Pursuant to 11 U.S.C. §§ 327(a) 328(a), 330 and Federal Rules of Bankruptcy Procedure 2014 and 2016* (the “Houmand Declaration”), all of which are filed separately and concurrently with this Court pursuant to Local Rule 9014(c)(2). The Application is also based on the pleadings and papers on file herein, and any argument that may be entertained at any hearing on the Application.²

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

1. On August 19, 2019, Las Vegas Land Partners, LLC (the “Debtor”) filed a voluntary bankruptcy pursuant to Chapter 7 of Title 11 of the United States Code [ECF No. 1].³

2. On August 19, 2019, the Trustee was appointed as the Chapter 7 Trustee in the Debtor’s bankruptcy case [ECF No. 2].

3. On October 3, 2019, the Debtor filed its bankruptcy schedules [ECF No. 20].

4. The Debtor’s Schedule A/B did not identify any real or personal property. *See* Schedule A/B [ECF No. 20], pp. 3-5.

5. The Trustee’s investigation of the Debtor’s financial affairs uncovered that the Debtor is the sole member of Wink One, LLC (“Wink One”) that, in turn, owns a forty percent

² The Trustee also requests that the Court take judicial notice of all pleadings filed in the above-captioned bankruptcy case, including adversary proceedings, pursuant to Rule of Evidence 201, incorporated by reference by FRBP 9017.

³ All references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court.

(40%) ownership interest in the real property described as: the city block bounded by Casino Center, Bonneville, South 1st and Garces Streets, Las Vegas, Nevada [APN 139-34-301-008] (the “Property”).⁴

6. The remaining sixty percent (60%) ownership interest in the Property is owned by Brookfield Asset Management (“Brookfield”).

7. The Property is currently leased to the Regional Transportation Commission of Southern Nevada (the “RTC”) until 2048.

8. The Trustee has commenced negotiations with the RTC to purchase the Property.

9. In furtherance of those negotiations, it has become necessary to obtain a specialized appraisal of the Property.

10. The Trustee has received a proposal from CBRE, Inc. (“CBRE”) to conduct the appraisal she requires. A copy of the proposed terms of employment for CBRE is attached to the Baroch Declaration as **Exhibit “1”**.

11. The total cost of the Appraisal is \$15,000.00, of which the Trustee, the RTC, and Brookfield will each pay \$5,000.00.

12. This amount is less than the amount that the Trustee would pay had the \$15,000 fee be split between the Trustee and Brookfield according to their respective ownership interests in the Property.

13. The Trustee now seeks to employ CBRE to conduct an appraisal of the Property.

⁴ See *B&M Land and Livestock, LLC*, 498 B.R. 262 (Bankr. D. Nev. 2013) (holding a Chapter 7 Trustee appointed in a case where a debtor has a membership interest in a single-member limited liability company automatically has the right to manage that company without the need to take further actions to comply with state law); see also *In re Cleveland*, 519 B.R. 304, 306 (D. Nev. 2014) (“Numerous bankruptcy courts have held, and the Court agrees, that where a debtor has a membership interest in a single-member LLC and files a petition for bankruptcy under Chapter 7, the Chapter 7 trustee succeeds to all of the debtor’s rights, including the right to control that entity, and a trustee need not take any further action to comply with state law before exercising such control.”); *In re Albright*, 291 B.R. 538 (Bankr. D. Colo 2003) (holding that a debtor’s bankruptcy filing, where the debtor was the only member of a limited liability company, effectively assigned her entire membership interest in the limited liability company to the bankruptcy estate, and the Chapter 7 Trustee obtained all of the rights to control management of the limited liability company).

14. On December 17, 2019, the Trustee filed a *Notice of Assets & Notice to File Proofs of Claim* [ECF No. 40] that established March 25, 2020 as the deadline to timely file proofs of claim.

15. On February 14, 2020, the Law Office of Hayes & Welsh (“H&W”) filed a proof of claim [Claim 1-1] that identified a general unsecured claim in the amount of \$77,732.36.

16. On March 12, 2020, Russell L. Nype (“Nype”) filed a proof of claim [Claim 2-1] that identified a general unsecured claim in the amount of \$4,484,944.19.

17. H&W and Nype are the only creditors that have filed proofs of claim in the Debtor’s bankruptcy case.

18. Counsel for the Trustee has contacted H&W and Nype and they have both consented to the employment of CBRE and the payment of \$5,000 from bankruptcy estate assets to obtain an appraisal of the Property.

19. The Trustee is currently holding funds in the amount of \$220,054.06.

20. After accounting for attorneys’ fees and expenses requested pursuant to the *First Interim Application of John W. Muije & Associates, for Allowance of Compensation for Services Rendered as Special Litigation Counsel During the Period From November 1, 2019 Through April 30, 2020 and for Reimbursement of Expenses Pursuant to 11 U.S.C. §§ 330 And 331 and Federal Rule Of Bankruptcy Procedure 2016* [ECF No. 63], the Trustee will have \$116,609.83 from which the pay the \$5,000 fee requested by CBRE.

II. JURISDICTION AND VENUE

21. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1134. This is a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (A). The statutory basis for the relief sought are Sections 327, 328, and 330 and FRBP 2014 and 2016. Venue of Debtor’s Chapter 7 case in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

III. CBRE

22. CBRE is well suited to conduct the appraisal required by the Trustee. CBRE is a full service commercial real estate firm. CBRE is able to determine the value of not only the real property at issue, but also the associated value that comes from the long-term lease associated

1 with that property and the specialized improvements made to the Property.

2 23. Accordingly, the Trustee has determined that CBRE has the resources and
3 experience necessary to effectively appraise the Property in a manner that will further the
4 negotiations to sell the Property for the benefit of the Debtor's bankruptcy estate and its creditors.

5 24. Following the Trustee's request that CBRE appraise the Property, CBRE
6 conducted a search of its client list.

7 25. Based upon this review of its client list, CBRE determined that it is a "disinterested
8 person" as defined by 11 U.S.C. § 101 and does not hold or represent any interest adverse to the
9 bankruptcy estate.

10 26. The conclusion that CBRE is a "disinterested" person within the meaning of 11
11 U.S.C. § 101(14) for purposes of 11 U.S.C. § 327(a) is based upon the fact neither CBRE nor any
12 of its associates:

- 13 (a) Are or were a creditor, equity security holder, or insider of
14 the Debtors except as set forth herein;
- 15 (b) Are or were, within two (2) years before the date of the
16 filing the bankruptcy petition, a director, officer or
17 employee of Debtors as specified in subparagraph (c) of
18 Section 101(14) except as set forth herein;
- 19 (c) Hold, or have ever held, an interest materially adverse to the
20 interest of the estate or of any class of creditors, equity
21 holders, or parties in interest, by reason of any direct or
22 indirect relationship to, or interest in, the Debtors or for any
23 other reason except as stated herein;
- 24 (d) Represent, or have ever represented, the Debtors, insiders of
25 the Debtors, creditors of the Debtors, any other party in
26 interest, or their respective attorneys and accountants except
27 as set forth herein; and
- 28 (3) Is a relative or employee of the U.S. Trustee or a
Bankruptcy Judge except as stated herein.

26 27. Except as set forth herein, CBRE has no connections with the debtor, creditors,
27 any other party in interest, their respective attorneys and accountants, the United States trustee, or
28 any person employed in the office of the United States trustee and that CBRE and each of its

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employees are all disinterested persons pursuant to 11 U.S.C. § 101(14).

28. CBRE has been employed by Brookfield, as successor to Forest City, as a real estate broker and appraiser.

29. CBRE represents no interest that is adverse to the Trustee, to the Debtors' estate, any creditor, any party in interest, the U.S. Trustee, or any attorney or accountant employed by the foregoing, in matters upon which it will be engaged as an appraiser.

30. The Trustee submits that CBRE is a disinterested person within the meaning of 11 U.S.C. § 101(14) for purposes of 11 U.S.C. § 327(a), as it pertains to the appraisal of the Property.

31. Subject to Court approval, the Trustee seeks to pay \$5,000.00 to CBRE for the appraisal of the Property.

32. This Application will be submitted to the United States Trustee upon the filing of the same.

IV. CONCLUSION

For the foregoing reasons, the Trustee respectfully requests that the Court enter an Order: (a) authorizing the Trustee to employ CBRE to appraise the Property based upon the terms set forth in this Application; (b) authorizing a payment of \$5,000 to CBRE for the cost of the appraisal without further court order; and (c) for such other and further relief as is just and proper.

Dated this 1st day of September , 2020.

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